Exhibit No:
Issues: NIM-5, ITR-1,2, 5-9,10g, 11a
OET-5e, GT&C-1,9a,9b,10a, 10b
GT&C-11a,11b,12a,12b, 13, 14a,
GT&C-14b 21a, 21b
Witness: Timothy Oyer
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P., d/b/a SBC Missouri
Case No: TO-2005-0166

SOUTHWESTERN BELL TELEPHONE L.P., d/b/a
SBC MISSOURI

CASE NO. TO-2005-0166

REBUTTAL TESTIMONY

OF

TIMOTHY OYER

Dallas, Texas
February 7, 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) Of the Communications Act of 1934, as Amended By the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms and Conditions of the Interconnection with Southwestern Bell Telephone Company, L.P., d/b/a SBC Missouri	)))))	Case No. TO-2005-0166

AFFIDAVIT OF TIMOTHY OYER

STATE OF TEXAS)

COUNTY OF DALLAS)

I, Timothy Oyer, of lawful age, being duly sworn, depose and state:

My name is Timothy Oyer. I am presently Area Manager-Interconnection for SBC Operations, Inc.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Timothy Oyer

LYNDA CREEDY NOTARY PUBLIC STATE OF TEXAS EXPIRES 01-30-2006

Sworn to before me this 1st day of February, 2005.

Notary Public

My Commission Expires: 01-30-2006

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Timothy Oyer. My business address is Three SBC Plaza, Dallas, Texas 75202.

Q. ARE YOU THE SAME TIMOTHY OYER THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my Rebuttal Testimony is to refute certain portions of the Direct Testimony of Messrs. Hunt and Wilson regarding Point of Interconnection ("POI"), the Combination of Traffic, and Transiting, which relate to the Interconnection Trunking Requirements ("ITR") Appendix, Network Interconnection Methods ("NIM") Appendix, and related General Terms and Conditions Definitions ("GT&C DEF").

II. POINT OF INTERCONNECTION ("POI")/COMBINING TRAFFIC

NIM ISSUE 5: Should The Interconnection Agreement Govern The Network Architecture And Exchange Of All Traffic Between The Parties, Or Just Local Traffic?

Agreement Reference: Network Interconnection Methods Section 2.5

ITR ISSUE 1: Should the list of types of traffic that will be carried over trunk groups include "Telecommunications Traffic" or "Section 251(b)(5) Traffic, ISP Bound Traffic, IntraLATA toll [and] InterLATA 'meet point'" traffic?

ITR ISSUE 2: Should Local Interconnection Trunk Groups And Meet Point Trunk Groups Be Limited To The Exchange Of Traffic Between The Parties' End Users?

Agreement Reference: Interconnection Trunking Requirements Section 3.3

"SBC ITR ISSUE 10(g): Should Two-Way Local Interconnection Trunk Groups Carry Only Section 251(B)(5)/IntraLATA Traffic?

Agreement Reference: Interconnection Trunking Requirements Section 5.2.7, 5.2.8, 5.2.9

ITR ISSUE 11(a): Should Section 5.3 Address Only Local Interconnection Trunk Groups?

Agreement Reference: Interconnection Trunking Requirements Sections 5.3, 5.3.1.1, 5.3.2.1

Q. MR. WILSON OF LEVEL 3 ASSERTS THAT SBC'S PROPOSED CONTRACT LANGUAGE "WOULD REQUIRE LEVEL 3 TO PROVISION A NEW SET OF TRUNK GROUPS TO COMPLETE [INTERLATA] TRAFFIC."[1] IS HIS ASSERTION VALID?

A. No. Mr. Hunt also makes a similarly inaccurate claim that **"**SBC wants Level 3 to undertake the expense of reconfiguring this network architecture, and has proposed language that would force Level 3 to create separate trunk groups to carry and interconnect various forms of traffic."[2] Ironically, Mr. Wilson conveys how Level 3 currently delivers this traffic by stating: "Today, Level 3 routs [sic] this traffic to 3rd Party IXCs for completion to SBC."[3] The decision to provision new trunk groups would be a business decision on the part of Level 3, since it already has arrangements utilizing third parties in place today, and SBC is not requiring Level 3 to change that arrangement. The current Feature Group D arrangement is a requirement of state and federal access tariffs that remain unaffected by this Interconnection Agreement. If Level 3 chooses not to use IXC partners as it does today to comply with access tariff requirements, then it can provision its own Feature Group D trunks. If Level 3 disagrees with the state or federal

[1] Wilson Direct, at p. 9.

[2] Hunt Direct, at p. 34.

[3] Wilson Direct, at p. 9.

access tariff requirements, it should take that up with this Commission or the FCC to contest the tariff, but the issue should not be part of a 251/252 arbitration.

Q. LEVEL 3 WITNESS HUNT CLAIMS THAT LEVEL 3 WISHES TO "PRESERVE THE STATUS QUO" [4] FOR THE DELIVERY OF INTERLATA TRAFFIC BY COMBINING INTERLATA TRAFFIC OVER LOCAL INTERCONNECTION TRUNK GROUPS. IS LEVEL 3'S PROPOSED ARRANGEMENT THE STATUS QUO FOR THE DELIVERY OF INTER-LATA TRAFFIC?

A. No. As discussed above, the status quo would have Level 3 route this traffic to 3rd Party IXCs for completion to SBC, as described above.

Q. FROM SBC MISSOURI'S POINT OF VIEW, WHAT IS AN EXAMPLE OF IMPROPERLY ROUTED TRAFFIC?

A. One example of improperly routed traffic is interLATA traffic that is being routed over a local interconnection trunk group, rather than over a meet point trunk group to an access tandem. Level 3 has argued in other arbitrations that there is no technical reason that a local tandem cannot handle toll traffic. While it is true that a tandem switch can be designed and provisioned to handle such traffic, it ignores the fact that neither a local-only or intraLATA-only tandem is capable of handling IXC-bound interLATA traffic, because it is not designed and provisioned to do so. Level 3 does not dispute that SBC Missouri's tandems are provisioned to carry only certain types of traffic and do not carry other types of traffic, which is why it has agreed to route only local traffic to local-only tandems.

Another example of a misrouted call can be found in Level 3's supplemental response to SBC Texas RFI 32(e) regarding a Level 3 end user originated call in San Antonio (within the San Antonio LATA) to an SBC Texas end user in Paris, Texas (within the Dallas LATA): Level 3 will deliver the call to the appropriate POI for San

[4] Hunt Direct, at p. 33.

Antonio and will compensate SBC Texas at the local termination rate or $.0007 if SBC Texas opted into the FCC's ISP Remand regime."[5]

In other words, Level 3 would hand the call off to SBC Texas in the San Antonio LATA and expect SBC Texas to deliver the call to Paris, Texas in the Dallas LATA. This is clearly an interLATA call – and assuming that this call delivered to a local interconnection trunk would not be accompanied by a designated pre-subscribed interexchange carrier ("PIC") selection - SBC would have no choice but to block that call. Put differently, SBC could not route a Level 3-originated call to an unspecified and unwilling IXC to transport the call across the LATA boundaries on Level 3's behalf. This also runs counter to Mr. Wilson's testimony as stated above that, while Level 3 would like to deliver interLATA traffic to existing local interconnection trunks, Level 3 remains willing to pay the "appropriate access rates to SBC."[6] That is because Level 3, in the San Antonio/Paris scenario described above, Level 3 would ignore the appropriate access rate for an interLATA toll call, and then expect a third party IXC to transport the call for free.

Q. WHAT IS LEVEL 3'S POSITION REGARDING PERCENT LOCAL USE ("PLU"), PERCENT INTERSTATE USE ("PIU"), AND PERCENT OF INTERNET PROTOCOL USE ("PIPU")? WHAT IS SBC MISSOURI'S VIEW OF THAT POSITION?

A. Level 3 claims that proper billing is a non-issue because either "one party or the other can keep track of each call and determine on a call-by-call basis whether the call requires the payment of access charges or whether the call requires other compensation" or "the

[5] See Rebuttal Schedule TO-1, attached hereto, at p.6.

[6] Wilson Direct, at p. 9.

companies can establish a Percent Local Use (PLU) and Percent Interstate Use (PIU).[7] Level 3 also says it has "offered to track the Percent of IP Use (PIPU) to measure the percent of IP-enabled traffic that is exchanged between the parties."[8] Yet, it appears that Level does not have the actual capability to do any of these things. In Level 3's response to SBC Texas RFI 11, Level 3 conceded that "Level 3 does not track MOUs by the traffic types identified."[9] The volumes of IP-enabled traffic in general have grown significantly, and these volumes are expected to grow even more in the future. Based on such rapid growth, and the fact that Level 3 and SBC cannot rely on MOUs (since Level 3 does not track them), it would be difficult if not impossible to determine an accurate and reliable PLU, PIU or PIPU. The traffic studies are impossible to produce without first measuring the segregated traffic patterns, and they are obviously in constant flux. In other words, once a combined architecture is instituted, studies to jurisdictionalize traffic are impossible to conduct since there is no way for SBC or Level 3 to separate and measure the traffic.

Q. PLEASE RECAP SBC MISSOURI'S POSITION IN LIGHT OF YOUR REBUTTAL TESTIMONY.

A. As discussed in my direct testimony, the heart of the dispute relating to combined trunk groups is whether traffic that Level 3 (in its capacity as an IXC) can put interLATA and possibly interstate traffic on the same trunk groups that carry local/intraLATA traffic exchanged between Level 3 and SBC Missouri acting as <u>local</u> exchange carriers. SBC Missouri seeks to have carriers utilize local interconnection trunk groups for Section

[7] Wilson Direct, at pp. 15 -16.

[8] Wilson Direct, at p. 16.

[9] Level 3's Response to SBC Texas RFI 11 (See Rebuttal Schedule TO-2, attached hereto, at pp. 2-3).

251(b)(5), intraLATA toll, and ISP-bound traffic. Pursuant to tariffs, when Level 3 is acting as an IXC, it should use switched access Feature Group D ("FGD") trunk groups for its interstate, and intraLATA / interLATA access traffic. SBC witness Sandra Douglas discusses the details of these access tariffs in her testimony. As demonstrated above, Level 3's proposal is little more than a guess of the amount and types of traffic that are exchanged between the parties.

III. TRANSIT

ITR ISSUE 5, 6, 7, 8, & 9: Is A Non-Section 251 Service – Transit Service, In This Instance – Subject To Arbitration Under 252 Of The 1996 Act?

Agreement Reference: Interconnection Trunking Requirements Sections 4.3, 4.3.1, 4.3.2, 4.3.3, 4.3.4

OET ISSUE 5(e): Should A Non-251/252 Service Such As Transit Service Be Negotiated Separately?

Agreement Reference: Out of Exchange Traffic Section 4.1

Q. WILL SBC'S TRANSIT PROPOSAL RESULT IN "NETWORK CONFUSION AND POTENTIAL DISRUPTION OF NORMAL CALLING BETWEEN GROUPS OF TELEPHONE USERS"[10]?

A. Absolutely not. Mr. Wilson implies that such results would occur because SBC is refusing to transit traffic. But SBC has not refused to transit traffic, as I explained in my Direct Testimony.[11] SBC has simply proposed a transit agreement separate from the arbitrated Interconnection Agreement. As explained in the Direct Testimony of SBC witness Scott McPhee, and in my own Direct Testimony,[12] SBC has no 251(c)(2) obligation to provide transiting, and therefore it is inappropriate to include such an

[10] Wilson Direct, at p. 19.

[11] Oyer Direct, at p. 27.

[12] Oyer Direct, at pp. 25-27.

agreement in the ICA. In fact, Level 3's Witness Mr. Hunt concedes that "[t]here is no FCC rule that requires SBC to transit traffic under Sections 251 and 252."[13]

Q. IS IT TRUE THAT "IT IS MUCH MORE EFFICIENT FOR SBC TO CARRY THE TRANSIT TRAFFIC THAN FOR LEVEL 3 TO ESTABLISH INTERCONNECTION TRUNKS WITH ALL OF THESE CARRIERS"[14]?

A. No. Not only does transiting require more trunks, and trunk groups to accomplish call completions, it also requires additional points of switching. From a network perspective, using third party transiting, i.e., indirect interconnection, is much less efficient than direct interconnection. In this regard, Level 3 seems to be talking out of both sides of its mouth. On the one hand, Level 3 claims that "indirect" connection with IXCs is less efficient than direct connection via SBC: "Level 3 would like to complete this traffic directly to SBC instead of using a third party intermediary."[15] Yet, in conveying its position regarding the delivery of local and intraLATA calls – it somehow finds it more efficient to transit such calls through a third party (in this case SBC) than to directly connect to those third parties: "[i]t is much more efficient for SBC to carry the transit traffic than for Level 3 to establish interconnection trunks with all of these carriers."[16].

Q. CAN YOU PROVIDE AN EXAMPLE THAT ILLUSTRATES THE INEFFICIENCIES OF TRANSITING TRAFFIC?

A Yes. As illustrated in Figure One below, in a simple transiting scenario where a call is transited through SBC's network, a minimum of two trunks and three points of switching will be involved.

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[13] Hunt Direct, at p. 46.

[14] Wilson Direct, at p. 22.

[15] Wilson Direct, at p. 9.

[16] Wilson Direct, at p. 22.

Transit Traffic

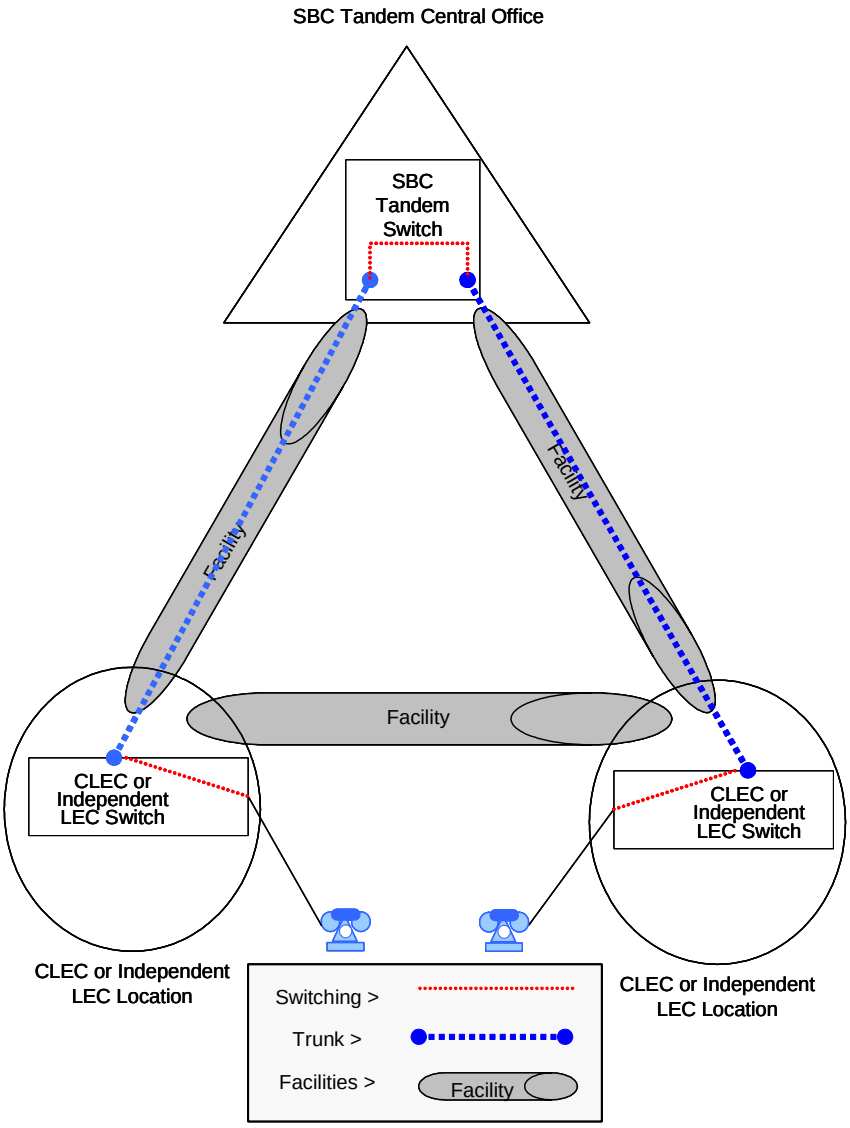

Figure 1

As illustrated in Figure Two (below), if the two local exchange carriers were to directly connect the two networks, a minimum of one trunk and two point of switching would be involved.

Direct Interconnection

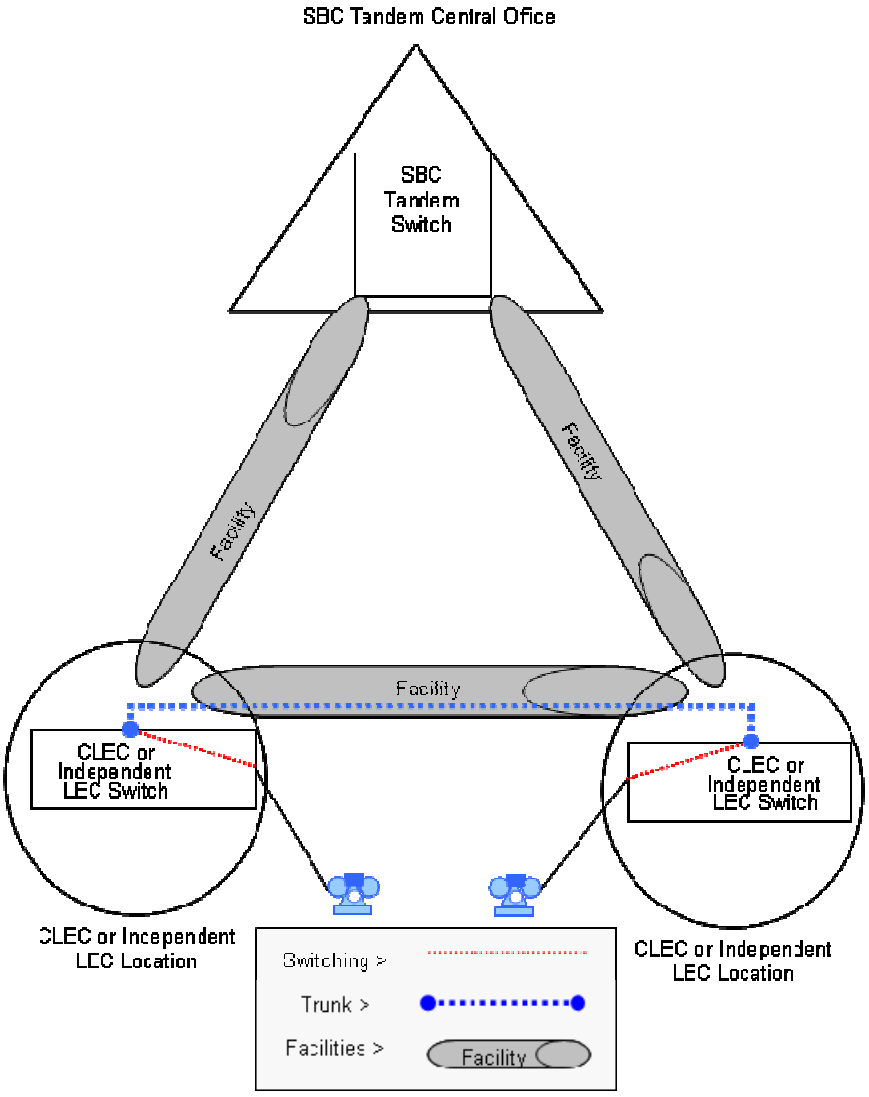

Figure 2

The illustrations above are typical of transit scenarios and direct interconnection. Almost invariably, processing calls through direct connection is more efficient in terms of trunks, switching, and facilities. Level 3's claim that efficiencies are achieved in transit scenarios has no merit, for these scenarios actually result in inefficiency for one or more of the other parties involved in a transiting scenario, without legitimate justification.

Simply stated, Level 3 is simply erecting a smoke screen with its efficiency arguments, and it should not be allowed to side step the real issues with transiting.

I will reiterate that SBC has not refused to allow Level 3 to transit traffic through its network. The facts are to the contrary. However, SBC has no obligation to transit on Level 3's behalf, and the terms of transiting should not be included in this interconnection agreement. Transit traffic is telecommunications traffic between originating and terminating carriers that is transported between the originating and terminating carriers over the network of a third party carrier (here, SBC Missouri). In other words, neither end user is an SBC Missouri customer. This agreement between Level 3 and SBC Missouri is only for the exchange of traffic between Level 3 and SBC Missouri pursuant to Sections 251 and 252. Level 3's transit traffic neither originates from nor terminates to SBC Missouri's network and, as such, does not create a Section 251/252 obligation subject to this agreement.

IV. GENERAL TERMS AND CONDITIONS ("GT&C") DEFINITIONS

GT&C DEFINITION 1: Should The Definition Of "Access Tandem Switch" Be Limited To IXC-Carried Traffic Or Should It Include Intra-LATA Toll Traffic, Section 251(B)(5) Traffic And ISP-Bound Traffic?

Agreement Reference: GT&C Definition of "Access Tandem Switch"

GT&C DEFINITION 9(a): Should The Commission Adopt A Definition Of "Local/Access Tandem Trunk"?

Agreement Reference: GT&C Definition of "Local/Access Tandem Switch"

GT&C DEFINITION 9(b): Should The Definition Of "Local/Access Tandem Switch" Reflect That Such Switches Are Used For Section 251(B)(5)/IntraLATA Traffic And IXC-Carried Traffic?

Agreement Reference: GT&C Definition of "Local/Access Tandem Switch"

GT&C DEFINITION 10(a): Should the Commission adopt a definition of "Local Interconnection Trunk Groups"?

Agreement Reference: GT&C Definition of "Local Interconnection Trunk Groups"

GT&C DEFINITION 10(b): If The Answer To GT&C Definition 10(A) Is Yes, Should "Local Interconnection Trunk Groups" Be Defined As Trunks Used To Carry Section 251(B)(5)/Intra-LATA Traffic Only?

Agreement Reference: GT&C Definition of "Local Interconnection Trunk Groups"

GT&C DEFINITION 11(a): Should The Commission Adopt A Definition Of "Local/IntraLATA Tandem Switch"?

Agreement Reference: GT&C Definition of "Local/IntraLATA Tandem Switch"

GT&C DEFINITION 11(b): If The Answer To (A) Is Yes, Should The Definition Of "Local/IntraLATA Tandem Switch" Reflect That Such Switches Are Used For Section 251(B)(5)/Intra-LATA Traffic?

Agreement Reference: GT&C Definition of "Local/IntraLATA Tandem Switch"

GT&C DEFINITION 12(a): Should The Commission Adopt A Definition Of "Local Only Tandem Switch"?

Agreement Reference: GT&C Definition of "Local Only Tandem Switch"

GT&C DEFINITION 12(b): If The Answer To (A) Is Yes, Should The Definition Of "Local Only Tandem Switch" Reflect That Such Switches Are Used For Section 251(B)(5) And ISP-Bound Traffic?

Agreement Reference: GT&C Definition of "Local Only Tandem Switch"

GT&C DEFINITION 13: Should The Definition Of "Local Only Trunk Groups" Reflect That Such Trunk Groups Are Used For Section 251(B)(5) Traffic Only?

Agreement Reference: GT&C Definition of "Local Only Trunk Groups"

GT&C DEFINITION 14(a): Should The Commission Adopt A Definition Of "Local Tandem"?

Agreement Reference: GT&C Definition of "Local Tandem"

GT&C DEFINITION 14(b): If The Answer To (A) Is Yes, Should The Definition Of "Local Tandem" Include Any Local Only,

Local/IntraLATA, Local/Access, Or Access Tandem Switch, As Defined, Serving A Particular LCA?

GT&C DEFINITION 21(a): **Should Virtual Foreign Exchange Traffic, Virtual NXX Traffic And FX-Type Traffic Be Defined As Traffic Delivered To Telephone Numbers That Are Rated As Local But Routed Outside Of That Mandatory Local Calling Area?**

GT&C DEFINITION 21(b): **Should "FX Telephone Numbers" Be Defined As Telephone Numbers With Different Rating And Routing Points Relative To A Given Mandatory Local Calling Area?**

Q. LEVEL 3 ASSERTS THAT "THE TANDEM SWITCHES IN VARIOUS SBC STATES DO NOT DIFFER IN THEIR CAPABILITIES. ANY TANDEM CAN HANDLE ANY TYPE OF TRAFFIC THAT IS TRUNKED TO IT."[17] HOW DO YOU RESPOND?

A. SBC disagrees with both of Level 3's assertions. Regarding the first, The ability for a tandem to handle a specific type of traffic requires that the tandem be designed, engineered and provisioned to handle that type of traffic. Mr. Wilson's position is analogous to saying that a tanker truck could be used to carry hazardous waste on the first half of a round trip, and carry milk for human consumption on the return trip. While it is conceivable that the tanker could carry different payloads, consideration must be given to the current use of the tanker. SBC employs tandems throughout its thirteen state operating territory that vary greatly in the types of functions they perform and, consequently, in the types of traffic they can handle. Mr. Wilson does not take any of these variances into account**.**

For similar reasons, the second assertion is likewise not accurate. Tandems are provisioned to handle specific types of traffic and are often unable to handle other types of traffic. For example, a local-only tandem cannot handle interLATA IXC traffic.

[17] Wilson Direct, at p. 48.

All of the definitions proposed by SBC are offered for the sake of clarity and to ensure that each of the elements and functionality of those elements are clearly understood by the parties. Specific definitions will minimize, if not eliminate altogether, potential confusion.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.